



**Zizi v Sifa Investment Limited (Cause E098 of 2023)  
[2025] KEELRC 972 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 972 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E098 OF 2023  
M MBARŪ, J  
MARCH 27, 2025**

**BETWEEN**

**MOHAMED JUMA ZIZI ..... CLAIMANT**

**AND**

**SIFA INVESTMENT LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a heavy commercial driver on 1 April 2012. He worked until 29 May 2023 at a wage of Ksh. 35,223 per month. The claim is that on 30 April 2023, while the claimant was on duty driving motor vehicle registration No.KBX 858Z/ZD5141 from Nairobi to Mombasa with an empty low-loader, the vehicle malfunctioned, resulting in an accident. Shortly after passing Taru at midnight, the vehicle's rear axle malfunctioned, and when he applied the brakes, there was an accident. The accidental commotion forced the vehicle to turn back, and the cabin hit the spare fuel tank and veered off the road.
2. The claimant's case is that following the accident, he suffered multiple bodily injuries. After the accident, unknown people took advantage and vandalized the vehicle, stealing several valuables, including the low-loader chains. The claimant managed to call the respondent about the accident, but the focus was on the damage to the vehicle and not his welfare. He was directed to take photographs of the vehicle and share them immediately.
3. The claimant remained at the accident site guarding the vehicle until 6 a.m. when the respondent sent a rescue team. To keep the vehicle safe, the claimant hired local people to provide security at his cost to avoid further vandalism. Due to the pain and injuries, the claimant had no chance to report the matter at the police station.



4. On 3 May 2023, a mechanic was sent to the site. He directed the claimant to Samburu, but the vehicle got stuck in the mud and required spending another night out. The respondent's director visited the site to check on the vehicle.
5. On 5 May 2023, the claimant returned the vehicle to the respondent's yard at Port Reitz and handed it to the mechanic. On 6 May 2023, he went to seek treatment at Likoni Sub-County Hospital, where his fractured hands were plastered and placed on medication. He paid for his treatment.
6. On 6 May 2023, upon seeking medical assistance, the respondent directed the claimant to proceed to the office to collect a notice to show cause letter arising from the accident. He noted that he was on sick leave, and the doctor had advised him to rest and requested to collect the letter after the sick leave. He also asked that the disciplinary hearing be changed from 13 May to 18 May 2023 to allow him to recuperate. However, the notice was posted on WhatsApp stating that there was an accident on 21 December 2022 at Ndara. The claimant noted that he had recorded a statement on the accident on 30 December 2022 and explained the circumstances where he tried to avoid a head-on collision with an oncoming vehicle. Since his statement, the respondent had gone silent. The inclusion of such matter among the new charges was an afterthought.
7. On 18 May 2023, while the claimant was on sick leave, he attended the disciplinary hearing and explained the cause of the accident. He was accused of careless driving and causing a self-accident. No investigation report of the two accidents was available to ascertain the veracity of the respondent's conclusion that the claimant was a careless driver. The accident on 30 April 2023 was due to a mechanical malfunction of the vehicle system.
8. The claimant was issued a notice of summary dismissal dated 29 May 2023 on 30 May 2023. The claim is that this was a wrongful, unlawful, and unfair termination of employment. The claimant had been diligent in his duties for 11 years, and the summary dismissal was unfair labour practices.
9. The claim is that unilateral and unexplained deductions from the claimant's salary disguised as advances or miscellaneous expenses were made without his express authority.
  1. In March 2013, there was a deduction of Ksh.1,030;
  2. June 2013, a deduction of Ksh.1,060;
  3. August 2023, a deduction of Ksh.3,600;
  4. August 2013, a deduction of Ksh.14,384;
  5. September 2013, a deduction of Ksh.2,060;
  6. October 2013, a deduction of Ksh.1,000;
  7. March 2014, a deduction of Ksh.10,000;
  8. January 2015, a deduction of Ksh.7,000;
  9. July 2015, a deduction of Ksh.4,000;
  10. November 2015, a deduction of Ksh.500;
  11. June 2016, a deduction of Ksh.1,010;
  12. May 2017, a deduction of Ksh.6,720;
  13. August 2017, a deduction of Ksh.5,205;



14. September 2017, a deduction of Ksh.5,098;
  15. March 2019, a deduction of Ksh.1,806;
  16. April 2019, a deduction of Ksh.4,731;
  17. April 2019, a deduction of Ksh.1,883;
  18. June 2019, a deduction of Ksh.1,669;
  19. March 2020, a deduction of Ksh.2,960;
  20. August 2020, a deduction of Ksh.3,000;
  21. September 2020, a deduction of Ksh.1,840;
  22. October 2020, a deduction of Ksh.8,500;
  23. October 2020, a deduction of Ksh.3,744;
  24. November 2020, a deduction of Ksh.2,760;
  25. September 2021, a deduction of Ksh.5,117;
  26. August 2022, a deduction of Ksh.1,050;
  27. January 2023, a deduction of Ksh.4,000;
- Total Ksh.106, 527.
10. The claim is seeking that an order be issued that his employment was terminated unfairly and the following awards;
    - a. Notice pay Ksh.35,223;
    - b. 12 months' compensation Ksh.422,676;
    - c. Overtime for 8 hours daily for 11 years Ksh.6,067,344;
    - d. Overtime for working on Sunday, Ksh.1,345,344;
    - e. Payment for working on rest days Ksh.2,696,688;
    - f. Payment for working on 11 public holidays Ksh.569,184;
    - g. Service pay for 11 years Ksh.193,727;
    - h. Compensation for infringement of constitutional rights to fair labour practices ksh.211,338;
    - i. Refund of wrongful deductions Ksh.106,527;
    - j. Costs of the suit.
  11. The claimant testified to support his case on 30 April 2023 while driving vehicle No.KBX 895Z had a self-involving accident at Taru. The vehicle developed mechanical problems, and to avoid a fatal accident, he applied emergency brakes, and the vehicle went off the road with extensive damage. He was injured and suffered fractures. He called the respondent for assistance, but they were only concerned with the damage to the vehicle and were directed to take photos, which he did. He was only assisted on 3 May 2023 after staying at the accident site and being forced to pay for local security to avoid vehicle vandalism.



12. The claimant testified that he drove the vehicle back to the respondent's premises and, on 5 May 2023, went to the hospital for treatment and was given sick leave. However, the respondent gave him a notice to show cause and an invitation to a disciplinary hearing on 18 May 2023. Despite being sick and recuperating, he attended the disciplinary hearing and was shocked to learn that the respondent had included a previous case he had addressed. It arose from an accident on 21 December 2022. He had explained, and the matter was settled, but this was again introduced as an afterthought, leading to unfair labour practices and summary dismissal through a notice dated 29 May 2023.
13. The claimant testified that there was no justification for the summary dismissal. He made a great effort to avoid a fatal accident and secure his vehicle in both cases and accidents.
14. He made long journeys to Uganda, Rwanda, and Sudan during his employment. He would incur parking costs and other expenses on the vehicle, which were deducted from his wages. From 2013, wrongful deductions of Ksh.106, 000 are due.
15. The claimant testified that following the vehicle accident on 21 December 2022, he reported to the respondent, and the insurance was paid. The counterclaim for Ksh.3 million for the alleged vehicle repairs is not justified. The insurance company should also pay for the injuries suffered. The first accident should not have been an issue in the notice to show cause issued to him, since it was resolved and the insurance paid.
16. Upon cross-examination, the claimant testified that when taking a journey, he would seek additional fuel costs, and money would be sent to him, but deducted from his salary.
17. He applied for annual leave, and the respondent approved. The various application forms filed by the respondent are the correct record of the days taken for annual leave. There are several Sundays when he would be at work without compensation. During the leave days taken, some fell during public holidays.
18. During a journey, the respondent had a schedule for stopping points and checkpoints. An internal memo dated 29 January 2016 directed all drivers to work 8 hours a day plus a lunch break for an hour. This arose from a meeting with the human resource officer and all drivers and turnmen, who agreed on the working hours and time for rest. The claimant admitted that he was present at this meeting, which led to the internal memo, and he signed the minutes and accepted the memo. However, every time he took a journey and stopped, the respondent would call him and direct that he should proceed, but the call logs were not filed.
19. The claimant testified that during his employment, he had a record of warnings for reckless driving and an accident on 23 December 2015. He made an apology. He had wanted to attend his uncle's burial, and a report was made that he was driving recklessly. On 21 December 2022, he had an accident involving vehicle No.KBG 422F, and he made a report to the police. The police abstract noted that he was to blame for the accident.
20. The respondent made repairs to the vehicle. There was a motor inspection report, and the driver knew that he should report all accidents to the police station and obtain an abstract, OB and inspection to allow follow-up with the insurance claim. He knew that without these documents, the insurance could not pay. Following the accident on 30 April 2023, he did not report to the police station. The respondent obtained the OB, abstract and inspection certificate. Due to injuries from the accident, the claimant sought medical attention and only managed to write a statement on 5 May 2023. The respondent was aware that he had suffered severe injuries, yet the immediate statement he had recorded was that he had minor injuries. The doctor did an X-ray and established there were fractures. The turn man travelling with him recorded a statement and noted that the claimant had no visible injuries. The internal fracture was not visible.



21. The claimant testified that the respondent had designated hospitals, but he opted to attend Likoni Sub-County Hospital near his residence. He also obtained DOSH forms and submitted them to the respondent.

### **Response and counterclaim**

22. In response, the respondent admitted that the claimant was employed as a heavy commercial driver in 2012. His primary duties included transporting goods to clients at various locations. He was obliged to adhere to the respondent's rules, regulations, and policy when handling the assigned vehicle. The wage paid by Ksh.35, 223 was subject to statutory deductions, which are lawful.
23. The claimant's employment had several complaints, including unsafe overtaking practices and reckless driving. On 23 December 2015, the respondent issued the claimant a warning letter for dangerous driving. He tendered an apology and accepted the incident. On 21 December 2022, the claimant was involved in an accident at Ndara while driving vehicle No.KBG 422F. Upon reporting the incident, he was issued a police abstract on 22 December 2022, indicating that he was to blame for the accident.
24. Motor vehicle No.KBG 422F had extensive damage and is immobilized as the yard awaits repairs. The aggregate costs are Ksh.1, 465,660. The respondent incurred expenses for the vehicle's recovery and logistics after the Ksh accident. 360,000 and continues to incur losses for non-use of the vehicle at Ksh.7, 012,830 from 1 January to 31 July 2023.
25. On 30 April 2023, in Taru along the Nairobi—Mombasa road, the claimant was involved in an accident while driving motor vehicle No.KBX 858Z, a truck that was assigned to him after he had damaged another in an accident. The accident was solitary, and the claimant was the sole party involved.
26. Following the accident, the claimant contacted the respondent's operations manager, and a rescue team was dispatched to carry out repairs and move the vehicle to the yard. The respondent incurred expenses of Ksh.289, 000 for recovery, towing, and logistics. The respondent sent Ksh.2, 060 to the claimant to hire local security for the vehicle. The claimant did not pay for the security, as alleged.
27. Since motor vehicle KBX 858Z had significant damage, it is immobilized at the yard, pending repairs assessed at Ksh.454, 140. The respondent continues to suffer loss and damage due to the vehicle's non-use from 1 May to 31 July 2023.
28. Vehicle registration No.KBX 8585Z was recovered after two days, and the claimant left the scene of the accident on 2 May 2023. He spent the night in Samburu town on 2 May 2023, and the allegations that he arrived at the yard on 5 May 2023 are incorrect.
29. Despite being involved in an accident, the claimant ignored, neglected and refused to report it on 30 April 2023 to the police station or obtain the police abstract and vehicle inspection report as required. The explanation was that he was charged with the duty to watch over the vehicle as the site was incorrect since there was a turn man and local security, which allowed the claimant to report the accident to the police station. When the vehicle was repaired on 2 May 2023, the claimant did not make a report at any police station from Taru to Mombasa.
30. The claimant did not inform the respondent of any injury to himself as alleged. The respondent only became aware of such allegations on 5 May 2023 when he reported to work. He submitted a medical treatment note dated 4 May 2023 from Likoni Sub-county Hospital indicating that he was on leave for 14 days. The respondent allowed him to proceed on leave.
31. Due to the claimant's conduct leading to accidents, on 6 May 2023, he was issued a notice to show cause dated 6 May 2023 for failing to report the accident to the police within 24 hours, but he failed



to respond. On 18 May 2023, he was invited to the disciplinary hearing, which he attended and his representations were found unsatisfactory. The respondent considered the previous conduct of the claimant and the accident on 21 December 2022, the expenses already incurred to restore the vehicles involved back to the road and future expenses and loss of business. The insurance cannot cover the costs without a police abstract, OB number, and police inspection report communicated to the claimant during the disciplinary hearing.

32. The respondent found the claimant culpable of gross misconduct for failing to report an accident to the police per the procedure and not obtaining the police abstract and OB together with police inspection. Summary dismissal was justified as required under Sections 41 and 44 of the *Employment Act*. Terminal dues were paid at Ksh.38, 628, and a Certificate of Service was issued under Section 51 of the *Employment Act*.
33. The claimant was aware of his working hours. While in transit, he regulated his working hours as a long-distance driver. There was no work on Sundays or public holidays, and the records filed in court with the response confirm this position. During public holidays and Sundays, the claimant was either assigned leave or his vehicle was at the yard for maintenance.
34. Wage deductions are allowed under Section 19 of the *Employment Act*. All deductions made on the claimant's wages were lawful, and he was aware of them.
35. In this case, summary dismissal was due to gross misconduct, and due process was adhered to. The claims made for overtime, public holidays, and Sundays from 2020 to 2012 are time-barred under Section 90 of the *Employment Act*.
36. The claim for service pay is not due since the respondent remitted statutory dues. The alleged unlawful deductions are within the law under Section 19 of the *Employment Act*.

### Response and Set Off

37. In response and plea for set off, the respondent seeks judgment against the claimant for ksh.2, 579,860, being expenses and costs of repair for the two vehicles damaged through accidents involving the claimant. The expenses include;
  1. Costs of repairing motor vehicle No.KBG 422F at ksh.1,465,660;
  2. Costs of recovery and logistics for vehicle No.KBG 422F at Ksh.360,000;
  3. Costs of recovery of vehicle No.KBX 858Z at Ksh.298,000;
  4. Costs for repairing vehicle No.KBX 858Z Ksh.454,140;
  5. Costs already incurred for guarding services for vehicle No.KBX 858Z Ksh.2,060Total Ksh.2, 578,860

### Counterclaim

38. In a counterclaim, the respondent is seeking payment for loss of business due to the conduct of the claimant. Following the accident on 21 December 2022, while driving vehicle No.KGB 422F and an accident on 30 April 2023 while driving vehicle No.KBX 858Z, the same being due to recklessness, carelessness and negligence of duty, the respondent is unable to use these vehicles. The losses include;
  1. The loss of use of motor vehicle No.KBG 422F for the period of 1 January to July 2023 is Ksh.7,012,850.51;



2. The loss of use for vehicle KBX 858Z from 1 May to 31 July 2023 is Ksh.3,021,823  
Total Ksh.10, 034,653.51
- The counterclaim is for the loss and damage caused by the claimant at Ksh.12, 614,514.22 applied with the set-off. Judgment should be issued against the claimant in for.
- a. Dismissal of the claim with costs;
  - b. A set off of the sum of Ksh.2,579,860;
  - c. The sum of Ksh.12,614,514.22;
  - d. Interests on the counterclaim;
  - e. Costs of the suit.
39. In evidence, the respondent called Shakil Mohamed Abdulla the operations manager. He testified that his duties are to oversee all drivers engaged in long-distance deliveries, including those crossing international borders.
40. On 30 April 2023, the claimant, while driving vehicle No.KBX 5858Z called him at 11.50 am to reprint a road traffic accident involving a vehicle at the Taru area. He did not report any injuries to himself. He organized for recovery and towing of the vehicle.
41. The accident occurred on a downward stretch of the road just before a hill. It was self-involving, where the claimant lost control and the vehicle veered off the road. The vehicle was damaged and had to be repaired for movement to the respondent's yard in Mombasa. The respondent paid for the security of the vehicle while at the accident site, the movement charges and repairs.
42. Shakil testified that the claimant, despite being a long-standing driver with experience, did not report the accident to the police. He left the site on 2 May 2023 without obtaining police OB, Inspection report and to date, no police abstract has been obtained. These records are required by the insurance.
43. The vehicle No.KBX 858Z had no prior defects before the accident for the alleged malfunction. It had undergone extensive repairs and delivered a cargo of 70 tonnes to Burundi and had been escorted back to safety in the Mombasa yard. The vehicle was serviced before the claimant left for his trip, and none of the axles had any defects; therefore not possible that the accident was a result of brakes as alleged. The only logical explanation for the accident is that the claimant was speeding and failed to keep a safe distance.
44. Shakil testified that the claimant was summarily dismissed from his employment on 29 May 2023 for gross misconduct. He was issued with a notice to show cause on 6 May 2023 and failed to respond. He was found culpable for failing to report an accident involving vehicle No.KBX 585Z to the nearest police station or obtain an OB. The claimant failed to take the motor vehicle for police inspection. Called to show cause, but he refused to respond.
45. For the gross misconduct, the summary dismissal was justified.
46. Shakil testified that as a result of the accident, the one on 21 December 2022 and 30 April 2023, the respondent has had to keep these vehicles at the yard at a huge loss. The repairs for the vehicles are extensive, and for KBX 585Z, the respondent has spent ksh.1, 465,660 on vehicle No.KBG 422F; costs of recovery and logistics for vehicle No.KBG 422F at Ksh.360, 000; Costs of recovery of vehicle No.KBX 858Z at Ksh.298, 000; Costs for repairing vehicle No.KBX 858Z Ksh.454, 140; and Costs



already incurred for guarding services to vehicle No.KBX 858Z Ksh.2, 060. The claim and plea for set-off is Ksh.2, 578,860.

47. Shakil testified that the respondent's counterclaim should be allowed for the sum of Ksh.10, 034,653.51 from the claim. Following extensive damage to Motor vehicles KBG 422F and KBX 858Z, the loss of use of motor vehicle No.KBG 422F for the period of 1 January to July 2023 is Ksh.7,012,850.51, and the loss of use for vehicle KBX 858Z from 1 May to 31 July 2023 is Ksh.3,021,823. Such an amount should be recovered from the claimant with costs.
48. At the close of the hearing, both parties filed written submissions.
49. The pleadings, evidence, and written submissions are analyzed and addressed in the findings. The issues which emerge for determination are;  
  
Whether there was wrongful, unlawful and unfair termination of the claimant's employment with the respondent;  
  
Whether there were unfair labour practices;  
  
Whether the remedies sought should be issued;  
  
Whether the plea for set off and counterclaim should be allowed; and

#### **Question of costs.**

50. Through a notice dated 29 May 2023, the respondent terminated the employment of the claimant through summary dismissal. The reasons were that;
  1. You ignored/failed to report the accident of KBX 858Z/ZD5141 on 01.05.2023 or immediately after to Taru police station and obtain the occurrence book reference (OB) and;
  2. You failed to take truck registration KBX 858Z/ZD5141 to Taru police station for inspection.
  3. You ignored/failed to respond to the showcase letter issued on 9 May 2023.
51. For these lapses, the claimant was invited to a disciplinary hearing on 18 May 2023 and upon his representations, he was found culpable for;
  1. Failing to report an accident of KBX 858Z/ZD5141 on 1 May 2023, or immediately report to the Taru police station and obtain an OB;
  2. Failing to present the truck to the Taru police station for inspection.
52. Under Section 44 of the *Employment Act*, an employer is allowed to sanction employment termination by summary dismissal. The safeguard for the employee is adherence to Section 41(2) of the Act. The employer must issue the employee notice to allow him to attend and make his representations as held in *Adundo v Chair-Kisumu County Assembly Service Board & 5 others* [2025] KECA 239 (KLR). Where the employee is issued with a comprehensive notice to show cause and fails to respond, he cannot turn back and claim that there were unfair labour practices as held in *Unilever Tea (K) Limited v Kenya Plantation & Agricultural Workers Union* [2024] KECA 540 (KLR). Called to account, the employee should seize the moment and give all the necessary details. Such does not aid an employee but places him directly in breach of Section 44 of the *Employment Act*, which allows the employer to dismiss the employee for ignoring lawful and proper instructions to address workplace misconduct.



53. In the accident on 21 December 2022, the claimant admitted that he drove to avoid a head-on collision with an oncoming vehicle, which resulted in an accident. He reported the incident to the police, and upon investigation, there was an abstract placing blame on him.
54. The claimant cannot justify his conduct and asserts that the respondent should not have addressed the accident on 21 December 2022 and the accident on 30 April 2023. He was to blame for the incident on 21 December 2022.
55. In the 2nd accident, the claimant testified that it was self-involving. He did not report the accident to the police as required under traffic laws and regulations. He explained that he had to remain at the accident site to guard the vehicle until rescue. However, the respondent sent money to him to hire local security, and he had the turn man with him.
56. As a long-standing driver, the employer's policy is that every accident, whether self-involving or not, is a matter of public policy and must be reported to the police. The response that there was insurance coverage for such accidents does not remove the claimant from the responsibility and duty under the Traffic Act to report a motor vehicle accident on a public road.
57. The claimant's conduct after the accident on 30 April 2023, failing to report to the police or immediately after ensuring that he secured an OB over the accident, is unjustified. Fundamentally, as an employee, he was called to account for his lapses and failed to respond to the show cause notice, which was a grave error.
58. The motions of due process were adhered to as held in the case of *Oyombe v Eco Bank Limited (Civil Appeal 185 of 2017) [2022] KECA 540 (KLR) (13 May 2022) (Judgment)*, that;  
...Four elements must thus be satisfied for the summary dismissal procedure to be said to be fair, being:
- a. An explanation of the grounds of termination in a language understood by the employee;
  - b. The reason for which the employer is considering termination;
  - c. Entitlement of an employee to have a representative of his choice when the explanation of the grounds of termination is being made;
  - d. Hearing and considering any representation made by the employee and the representative chosen by the employee.
59. The due process for gross misconduct is aptly summarized in the case of *Chepkuto v Egerton University Investment Co Ltd [2024] KECA 1848 (KLR)*, that Section 44 of the Employment Act requires the employer to demonstrate that the employee's conduct shows a fundamental breach of their contractual obligations. This breach can arise from various actions or omissions listed in that section and related issues. But that is not all; section 41 of the Act provides the procedure for notification and hearing before termination on grounds of gross misconduct.
60. There were substantive reasons for summary dismissal in this case, and the claimant was taken through a proper disciplinary hearing. The resulting termination of employment was justified.
61. The claim for notice pay and compensation is not available.
62. On the claim that there were unfair labour practices, the claimant called the respondent officer immediately after the accident and reported that he had minor injuries. He remained at the accident site until a rescue on 2 May 2023. He did not report any serious injury until 5 May 2023, when he was issued a notice to show cause.



63. The respondent's witness admitted that all employees can attend specific medical facilities. From 30 April 2023 to 5 May 2023, the claimant did not report any serious injury in his statement or to the police. He opted to attend Likoni Sub-county Hospital instead of the designated facilities. The report of serious injury and fracture was after being served with a notice to show cause.
64. Being granted sick leave by the doctor does not exonerate the claimant from his responsibility to the employer. When called to account for his gross misconduct and allowed time to attend a disciplinary hearing, where such time was insufficient, he did not ask for an extension. He ignored the notice to show cause. He squandered the chance to explain as held in *Okun v Kenyatta University [2023] KEELRC 2340 (KLR)*.
65. Without laying a proper foundation over the alleged wrongful, unlawful and unfair termination of employment, to claim under unfair labour practices is without merit.
66. Working hours were agreed upon regarding the claims for terminal dues for overtime work. The claimant admitted to the internal memo dated 29 January 2016, when the drivers attended and before the human resource officer agreed to work for 8 hours with a lunch break. The claimant has signed the minutes and received the memo. Evidence does not support his case that the respondent would call him to drive beyond the agreed work hours.
67. The internal memo dated 5 June 2018 reminds the drivers to work from 6 a.m. to 6 p.m. It references the earlier memo of 29 January 2016.
68. On the claim for working on Sundays, in cross-examination, the claimant was taken through the records and admitted that he was allowed to rest on Sundays or was allocated leave days. A rest day under Section 27 of the *Employment Act* is one day within the week. This may not necessarily be a Saturday or Sunday. Depending on the nature of the business, the claimant being engaged on long journeys and the allocation of leave days to compensate for the due rest day is lawful.
69. The schedules filed by the respondent confirm that the claimant was accommodated regarding the rest day claim and the allegations of working on Sunday, as addressed above.
70. On the claim for 11 public holidays, although these are addressed by the respondent within the leave days allocated to the claimant, public holidays are all published by the Minister. A claim for work during such a day must be specified and particularized to allow the employer to confirm and file the necessary records. A general claim for 11 days is not sufficient.
71. The claim for service pay for 11 years is due when the employer fails to deduct and remit statutory dues under Section 35(5) and (6) of the *Employment Act*. In this case, the respondent filed payment statements with evidence of statutory payment. The claimant has not attached any collective agreement for a policy document that gave a benefit of service pay over and above the legal threshold.
72. On the claim for salary deductions from 2013 to 2023, as submitted by the respondent, under Section 89 of the *Employment Act*, any continuing injury must be addressed within 12 months from the date of cessation. A wage deduction from 2013 that is alleged to have continued to accrue until 2020 is time-barred.
73. As submitted by the respondent, lawful wage deductions are allowed under Section 19 of the *Employment Act*. The claimant gave a long list of deductions. He did not account for the reasons leading to such deductions. The respondent's case is that these were wage advances and allowed deductions under the law. The claimant does not give further particulars to support such claims in the written submissions.



### **Set off and counterclaim.**

74. An employer is allowed to effect lawful and legitimate deductions from the employee's wages at the end of employment. Where the employee incurs or causes the employer to incur damage or loss of property entrusted to the employee due to the employee's wilful default, the employer is allowed under Section 19(1) (c) of the [Employment Act](#) to deduct the loss from the employee.
- (b) A reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the willful default of the employee;
- The summary dismissal was found justified due to the negligent work performance of the claimant; the losses incurred are recoverable from him. Section 19 of the [Employment Act](#) must be read together with Section 44(3) and (4) (c) of the Act. Where the employee is in fundamental breach of the employment relationship due to careless and negligent performance of duty, the employer can recover any loss resulting from such gross misconduct as held in *Ajuoga v Kenya Revenue Authority* [2024] KEELRC 322 (KLR). This position is reiterated in the case of *Assen & another v Khamunya* [2025] KEELRC 369 (KLR). Careless performance of duty leading to loss of property and costs is a fundamental breach of the employment contract as held in *Hayombe v Kenya Water Institute* [2025] KEELRC 488 (KLR).
75. Following the accident caused by the claimant's carelessness and negligence on 30 April 2023, the claimant failed to report the matter to the police to obtain the OB and police abstract. He further failed to present vehicle No. KBX 5858Z to the Taru police station or any other station along his route path from Taru to Mombasa for inspection and issuance of the required certificate to allow the respondent to present these documents to the insurance.
76. The respondent incurred costs as a result of the claimant's gross misconduct. The respondent was denied the use of the vehicles rendered immobile due to the gross misconduct of the claimant in the form of;
1. Costs of recovery of vehicle No.KBX 858Z at Ksh.298,000;
  2. Costs for repairing vehicle No.KBX 858Z Ksh.454,140;
  3. Costs already incurred for guarding services to vehicle No.KBX 858Z Ksh.2,060;
  4. The loss of use for vehicle KBX 858Z from 1 May to 31 July 2023 is Ksh.3, 021,823.
77. For the accident on 21 December 2022, the claimant admitted that while driving motor vehicle No.KBG 422F, he was overtaking another vehicle while driving at a speed contrary to the allowable limit. While avoiding an oncoming vehicle, he was involved in an accident, leading to damage and losses to the respondent. The respondent was denied the right to use the vehicle, leading to further losses. These losses are;
1. Costs of repairing motor vehicle No.KBG 422F at ksh.1,465,660;
  2. Costs of recovery and logistics for vehicle No.KBG 422F at Ksh. 360,000;
  3. The loss of use of motor vehicle No.KBG 422F for the period of 1 January to July 2023 is Ksh. 7,012,850.51
78. These costs are due from the claimant under sections 19 and 44 of the [Employment Act](#), the total loss of Ksh. 12,614,514.22 under the counterclaim is due and owing from the claimant to the respondent.



79. On costs, the claim is without merit and is hereby dismissed. The counterclaim is with merit and is hereby allowed with an award of Ksh. 12,614,514.22 with costs from the date of the judgment until paid in full. Such shall suffice on the claim for interests and the awarded costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27 MARCH 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant:

..... and .....

